



Department of Energy
National Nuclear Security Administration
Washington, DC 20585

2003-010801
206-000012

SEP 9 2003

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515-2107

Dear Representative Markey:

This is in response to your July 29, 2003, letter in which you asked several questions about the expiration of the National Nuclear Security Administration (NNSA) Advisory Committee.

The NNSA Advisory Committee was established in June 2001 by former Administrator John Gordon as a discretionary advisory committee to advise him on a wide range of issues affecting the newly established NNSA. As is the case with most discretionary advisory committees, the NNSA committee was established for a period not to exceed two years. The charter for the NNSA Advisory Committee expired in June 2003. There is no requirement to announce the expiration of a discretionary advisory committee.

The Advisory Committee met five times between June 2001 and May 2002. Another meeting scheduled for August 2002 was postponed to November because of funding concerns. Budget uncertainties caused by a series of continuing resolutions prompted another postponement and a final meeting was not rescheduled.

Much of the work of the Advisory Committee was accomplished in open discussion during the meetings, which were attended by the NNSA Administrator, rather than through formal reports. The Committee produced one formal report that was submitted to the Administrator in March 2002. This report included the two documents, *Science and Technology in the Stockpile Stewardship Program* and *Science and Technology in the NNSA Nonproliferation and Counterterrorism Programs*, referred to in the June 24, 2002, Federal Register and mentioned in your letter. Because of the classified nature of much of NNSA's national defense mission, the work of this Committee was conducted in closed sessions, as permitted by the Federal Advisory Committee Act (FACA). The March 2002 report was not released to the public because sensitive information contained in the report is considered "For Official Use Only." The report is being reviewed by the Office of General Counsel to determine whether the report, or a portion of it, may now be made public.

The expiration of the Advisory Committee's charter does not preclude the Administrator from initiating other advisory groups when warranted. The NNSA has always had ample independent oversight and analysis requested by the Department or the Congress.

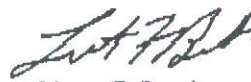


Printed with soy ink on recycled paper.

You also requested the Department's views regarding section 3114 of the House-passed version of National Defense Authorization Act for Fiscal Year 2004. This provision would only codify existing law, as it has been understood consistently since 1962, that advice received by the Department and its predecessors from groups of the federally-funded management and operating contractor personnel that carryout the governmental functions regarding nuclear weapon and other nuclear research and production does not implicate the Federal Advisory Committee Act or its predecessor executive order. A recent court decision has cast doubt on this 40-year old understanding of the law, and so of course the Department supports the Administration position that a statutory clarification is entirely appropriate.

If you have any further questions, please feel free to contact me or Ms. Shannon D. Henderson, Acting Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,



Linton F. Brooks